



DEPARTMENT OF THE NAVY  
NAVAL DISTRICT WASHINGTON  
1343 DAHLGREN AVE SE  
WASHINGTON NAVY YARD DC 20374-5161

5720  
Ser N00J/171  
June 21, 2023

Via FOIA Online: [aburckman@comcast.net](mailto:aburckman@comcast.net)

Ms. Andrea Burckman  
720 Appomattox Road W  
Davidsonville, MD 21035

Dear Ms. Burckman:

SUBJECT: FREEDOM OF INFORMATION ACT REQUEST DON-NAVY-2023-008507

This responds to your Freedom of Information Act (FOIA) request in which you seek the following:

documents such as emails and merit promotion file documents created between August 1, 2022 and April 1, 2023 relative to the recruitment and selection of the NDW Deputy EEO Officer (excluding information relative to the applicants or selectee but including information relative to the process and compliance with policy and regulation). Specifically: a copy of the Request for Personnel Action to recruit; a copy of the vacancy announcement; a copy of the position description and cover sheet showing the organizational hierarchy and the position titles of the first and second line supervisors of the position; a copy of NDW policies on merit staffing, selection and interview processes. Additionally, the following documentation reflecting that NDW did or did not comply with its own policy: documentation related to the selection/identification of interview and selection panel members for this position; emails to or from Rae Sullivan or Arnita Evans identifying the position titles or names of the panel members; a copy of the required documentation showing pre-approval of the interview questions; documentation of the selection of panel members; documentation of any request or approval of a waiver to comply with NDW selection or interviewing policy; emails documenting Rae Sullivan requested and received approval of the individual selected from Admiral Nancy Lacore or Timothy Bridges.

Your request was received by the agency on April 10, 2023 and assigned tracking number DON-NAVY-2023-008507.

Your request was processed in accordance with the FOIA, 5 U.S.C. § 552. We have searched for records within the possession of Naval District Washington and Commander Navy Installations Command. Forty-five (45) pages of responsive documents were identified and are enclosed to this letter. This is a partial release. Names of employees and related personal information were withheld under exemption (b)(6) of the FOIA. Additionally, conversations in email messages that implicated the deliberative process were redacted under exemption (b)(5).

Exemption (b)(6) allows an agency to withhold “personnel and medical files and similar files” if disclosure would constitute a “clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). The phrase “similar files” covers any agency records containing information about a particular individual that can be identified as applying to that individual. *See United States Dep’t of State v. Washington Post Co.*, 456 U.S. 595 (1982). To determine whether releasing records containing information about a particular individual would constitute a clearly unwarranted invasion of personal privacy, we are required to balance the privacy interest that would be affected by disclosure against any public interest in the information. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of Press*, 489 U.S. 749 (1989).

Exemption (b)(5) allows an agency to withhold “inter-agency or intra-agency memorandums or letters, which would not be available by law to a party in civil litigation. Exemption (b)(5) incorporates the privileges that protect materials from discovery in litigation, including deliberative process. The deliberative process privilege protects the decision-making process of government agencies and encourages the “frank exchange of ideas on legal or policy matters” by ensuring agencies are not “forced to operate in a fish bowl.” *Mead Data Cent., Inc. v. United States Dep’t of the Air Force*, 566 F.2d 242, 256 (D.C. Cir. 1977) (internal citations omitted). A number of policy purposes have been attributed to the deliberative process privilege. Among the most important are to: (1) “assure that subordinates . . . will feel free to provide the decisionmaker with their uninhibited opinions and recommendations”; (2) “protect against premature disclosure of proposed policies”; and (3) “protect against confusing the issues and misleading the public.” *Coastal States Gas Corp. v. United States Dep’t of Energy*, 617 F.2d 854, 866 (D.C. Cir. 1980). The deliberative process privilege protects materials that are both predecisional and deliberative. The privilege covers records that “reflect the give-and-take of the consultative process” and may include “recommendations, draft documents, proposals, suggestions, and other subjective documents which reflect the personal opinions of the writer rather than the policy of the agency.” *Id.*

Under the FOIA, an agency may withhold information only if the agency reasonably foresees that disclosure would harm an interest protected by an authorized FOIA exemption or if disclosure is prohibited by law. If information must be withheld, the agency must consider whether partial disclosure of information is possible and take reasonable steps to segregate and release nonexempt information. In preparing my response to you, I considered this standard and determined that the privacy interest of employees named in the attached records (excluding Flags and SES employees) was not outweighed by the public interest. Additionally, I determined that discussions between employees involving deliberative and predecisional matters required withholding to protect the integrity of the deliberative process. I have taken reasonable steps to segregate and release nonexempt information.

There are no fees for this request.

As your request is partially denied, you are advised of your right to appeal this determination by submitting an appeal to the Office of the Judge Advocate General (Code 14) using FOIA online at <https://foiaonline.gov> (the preferred method), or in writing to: Office of the Judge Advocate General (Code 14), 1322 Patterson Ave, SE, Ste 3000, Washington Navy Yard, DC 20374-5066. Your appeal must be postmarked within 90 calendar days from the date of this letter. As the requester, you have the burden of proving timely submission of any appeal. A copy

of your initial request and this letter should accompany the appeal. In order to expedite the appellate process and ensure full consideration of your appeal, your appeal should contain a brief statement of the reasons you believe this decision to be in error.

For this determination, you have the right to seek dispute resolution services from the Department of the Navy FOIA/PA Public Liaison, Mr. Christopher Julka, at [christopher.a.julka@navy.mil](mailto:christopher.a.julka@navy.mil) or (703) 697-0031. You may also seek dispute resolution services from the Office of Government Information Services (OGIS), the Federal FOIA/PA Ombudsman's office, at (202) 741-5770 or [ogis@nara.gov](mailto:ogis@nara.gov).

If you have any questions regarding the processing of your request, you may contact the Naval District Washington FOIA/PA liaison at [CNI.NDWFOIA@navy.mil](mailto:CNI.NDWFOIA@navy.mil).

Sincerely,



J. M. KENNEDY  
Commander, U.S. Navy  
Judge Advocate General's Corps  
Staff Judge Advocate

Enclosure